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No. 82-835

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners-Appellants-Defendant.

vs.

PEOPLES LIBERTY BANK

Respondent-Appellee-Plaintiff.

MOTION TO DISMISS OR AFFIRM

RICHARD S. NELSON, ESQ.

Attorney for Respondent/
Appellee/Plaintiff

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QUESTION PRESENTED FOR REVIEW

1. Whether the Trial Judge erred in his refusal four years after Entry of same to set aside a mortgage foreclosure Sale, Order Confirming Sale, Deeds executed pursuant thereto, and two Writs of Possession thereafter, and if so, does this constitute a violation of any Constitutionally protected right of the Appellant.

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No. 82-835

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners-Appellants-Defendant,

vs.

PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Respondent-Appellees-Plaintiffs.

RESPONDENTS REPLY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CONSTITUTIONAL

and

STATUTORY AUTHORITIES

KENTUCKY REVISED STATUTES

K.R.S. 426.571 – When commissioner may convey real property – Death of party after sale – (1) real property may be conveyed by a commissioner appointed by the court:

(a) If by the judgment in an action a party be ordered to convey such property to another.

(b) If such property have been sold under a Judgment or order of the Court and the Sale confirmed.

(2) The death of a party, after a sale, does not prevent a conveyance. It shall be made, and shall have the same effect, as if he were living.

K.R.S. 426.572 – Requisites of commissioner's deed – The Deed of the Commissioner shall refer to the judgment orders and proceedings authorzing the conveyance, so that the same may be readily found.

K.R.S. 426.573 – Title passed by deed made pursuant to judgment – A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

K.R.S. 426.574 – Title passed by deed made pursuant to order of sale – A conveyance made in pursuance of a sale ordered by the Court shall pass to the grantee the title of all the parties to the action or proceeding.

K.R.S. 426.005 – Personal Judgment in action to enforce mortgage or lien – When mortgage may be enforced – (1) in an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally. (2) In an action to enforce a mortgage or other lien a sale of the property may be ordered without giving time to pay money or do other act.

K.R.S. 426.260 – Motion for Possession by purchaser; notice; judgment (1) The purchaser of land sold under execution and not redeemed after obtaining a conveyance therefor may, upon ten days' notice in writing to the defendant in the execution, whose lands have been sold, enter a motion on the docket in the circuit court of the county where the land is situated for a judgment for the possession of the land. If upon the hearing of the motion, the court is of the opinion that the purchaser is entitled to the possession, it shall render a judgment accordingly and award possession, with costs. The proceedings on the motion shall be provided in K.R.S. 418.005 to 418.015, and Rule 6.03 of the Rules of Civil Procedure.

(2) The notice referred to in subsection (1) of this section shall be in substance as follows:

"A,B to C,D notice:

"You are hereby notified that I, will on the ..... day of ....., 19...., enter a motion on the Docket of the ..... Circuit Court for a judgment for the possession of certain lands situated in ..... County, Kentucky which lands are described as follows: (DESCRIPTION), being the same lands bought by me at a sale duly held under execution which issued from the office of the Clerk of the ..... Court in favor of ..... Plaintiff vs. ....., Defendant. (See Execution Book ....., Execution No. .....). A B."

SUPREME COURT RULES

Supreme Court Rule 34 (6)

Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome irrelevant immaterial and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the Court.

Supreme Court Rule 17

1. A review on Writ on Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following while *neither controlling nor fully measuring the Court's discretion,* indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from

the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

2. The same general considerations outlined above will control in respect of petitions for Writs of Certiorari to review judgments of the Courts of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on Writs of Certiorari.

KENTUCKY RULES OF CIVIL PROCEDURE

KY. RULE OF CIVIL PROCEDURE 59.05

MOTION TO ALTER, AMEND, OR VACATE A JUDGMENT

A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than ten days after entry of the final judgment.

KY. RULE OF CIVIL PROCEDURE 60.02

MISTAKE,: INADVERTANCE: EXCUSABLE NEGLECT: NEWLY DISCOVERED EVIDENCE: FRAUD, etc.

On motion, a court may upon such terms as are just, relieve a party of his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertance, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no langer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds, (a), (b), and (c) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule does not affect the finality of the judgment or suspend its operation.

COUNTERSTATEMENT OF CASE

In light of the deluge of mis-statements of facts in Petitioner's Statement of the Case, Respondent must clarify the actual facts.

In August, 1976 Appellee filed a suit against Appellants upon their mortgage Promissory Notes and asked for foreclosure and sale of certain property mortgaged by Appellants to Appellee incident to the Promissory Note and the proceeds of such apply to satisfy any judgment rendered against them in the foreclosure action. App. pp. 1a-5a.

The case was referred to the Master Commissioner of the Kenton Circuit Court who took proof under oath in an evidentiary hearing on March of 1977. App. pp. 6a-10a.

Appellants filed objections to the Master Commissioner's Report, the Kenton Circuit Court overruled those objections, confirmed the report on March 18, 1977 and entered its Judgment and Order of Sale on April 21, 1977. App. pp. 11a-16a.

On June 21, 1977, the Order of Sale was carried out, the Master Commissioner filed his report of sale (App. pp. 17a-19a) and moved to confirm same. The sale was confirmed on June 27th and final report of the Master Commissioner was confirmed on July 18, 1977. Appellee being the highest bidder at the sale, a Deed was issued by the Master Commissioner with Court approval vesting title in the real estate in the name of the Appellee.

No Appeal was taken from that final report nor from the Judgment and Order of Sale entered April 21, 1977.

In September of 1977 Appellee moved for a Writ of Possession pursuant to K.R.S. 426.260 (App. pp. 20a-23a)

and such Writ was issued October 19, 1977. Appellants appealed the issuance of such Writ. On February 7, 1978, the Kentucky Court of Appeals granted Appellee's Motion to Dismiss the Appeal (App. p. 24a) and on March 30, 1978 denied Appellant's Motion to Reconsider. (App. p. 25a)

With total inadherance to procedural rules, while their Motion for the Court of Appeals to reconsider its dismissal was pending, on March 8, 1978, Appellants filed a Motion in the Kenton Circuit Court under C.R. 60.02 to vacate and set aside the Order confirming the Master Commissioner's final report and the Writ of Possession "on the grounds that the foreclosures were procured by fraud and discrimination . . . and the Writ of Possessions were defective and wrongfully issued . . . ." (App. pp. 26a-30a) These motions were overruled by the Kenton Circuit Court on March 21, 1978. On March 28, 1978 Appellants filed a Motion to "Alter and Amend Judgment" and a Motion for the Kenton Circuit Judge to disqualify himself, same being overruled, appealed and finally dismissed on January 14, 1978.

Appellee again moved for a Writ of Possession as Appellants had moved back into the property now owned by Appellee. (App. pp. 31a-32a)

On July 12, 1978 the Writ and Order of Possession were issued by the Kenton Circuit Court and executed on July 19, 1978 by the Kenton County Sheriff. (App. pp. 33a-36a)

On May 1, 1981, over four years after the non-appealed Judgment and Order of Sale and deed to Appellee and almost three years after the second Writ of Possession was executed by the Kenton County Sheriff, Appellants filed Motions in the Kenton Circuit Court to set aside the mortgage foreclosure sale, the Order confirming that sale, to cancel the deeds made pursuant thereto, and to set aside

the Writs of Possession. Their motions were overruled and the present Appeal taken. (App. pp. 37a-38a)

ARGUMENT

Respondent finds the temptation to respond to the misstatements and allegations in Petitioner's Brief nearly over-whelming.

However, in lieu thereof, Respondent believes it is more appropriate and in the interest of justice to address the actual issue before this Court, something Petitioners have chosen to avoid. The issue is simply whether the Trial Judge erred four years later in overruling Petitioners' motion to set aside various orders pertaining to a foreclosure action thereby violating any constitutional rights of Petitioners.

First, the Respondent must assert that Petitioners have subjected all parties hereto to a frivilous Appeal by saturating their Petition with "burdensome, irrelevant, immaterial, and scandalous matter in a blatant attempt to cloud the very clear issue before this Court.

This has been the very nature of Petitioners' appellate process. They simply reiterate the same falsehoods and naked, unsupported allegations in every brief they have filed regardless of the pertinent issues.

The Court of Appeals of Kentucky clearly recognized this in its opinion wherein it was stated:

> "Although we recognize the extent to which the Appellants must have labored in an attempt to present their case to this Court, the unfortunate result is that the Brief is devoid of anything of Legal Relevance." (Petitioners App. p. 9a)

It is therefore asserted that Petitioners' Brief should be disregarded and stricken by the Court. Sup. Ct. Rule 34 (6).

In the actual issue at hand, in capsule form, the Trial Judge's position was clear. That Court was faced with a Motion to Vacate and/or Amend or Alter various Orders arising out of a foreclosure on Petitioner's home, a foreclosure based on a flagrant arrearage on Petitioners' part, (an arrearage found by the Trial Court of absolutely no payments on principal from January 1, 1974 to March 10, 1977) (App. p. 14a) and properly prosecuted pursuant to Kentucky Law. KRS 426.571; KRS 426.005; KRS 426.573; KRS 426.574; *Pemberton* v. *Harden,* Ky., 80 S.W.2d 589 (1935).

Adding to the Trial Judge's task was the fact that the Petitioners had filed this motion four years late as Kentucky Law required as unsuccessful litigant to bring his or her motion to alter, amend, or vacate a judgment not later than ten (10) days after entry of the final judgment. Ky. C.R. 59.05. The Final Judgment at issue before the Trial Court in 1981 was the Order confirming the final report of the Master Commissioner entered July 18, 1977.

Further, the Trial Judge applied Ky. C.R. 60.02 to the allegations made by Petitioners and found no new grounds to exist, no newly discovered evidence, or any other element under Ky. C.R. 60.62 pursuant to which relief could be granted. Therefore the Trial Judge was faced with the same allegations as those which this Court is now faced; allegations which have been continually ruled on by Kentucky and Federal Courts (cf. Patricia Thompson and Eddie Thompson, Jr. vs. Peoples Liberty Bank and Trust Co. # 80-1358) who found nothing to justify Plaintiff's four year delay in bring their motion or even

any merit in their arguments. He clearly did not abuse his discretion in overruling those motions.

Whether the Trial Judge's Order overruling Plaintiff's motions is an act which may be seen as a potential violation of any protected constitutional right of the Plaintiffs is another element of the issue at Bar which Petitioners seem to ignore.

Under the Rules of this Court, there are guidelines which are designed to aid the Court in using its discretion in reviewing writs of certiorari. Sup. Crt. Rule 17 (1) (a) is of no relevance, dealing solely with petitioners from Federal Courts.

Sup. Crt. Rule 17 (b) and (c) are further unfulfilled by the Petition at Bar as there has been no federal question ruled on by any state court below. Indeed, the Order of the Trial Court at issue herein was one of pure procedure and violated no rights of the Petitioners, Federal or otherwise.

It is clear that the Petition at Bar raises no Federal question and is serving merely as a vehicle for yet more of Petitioner's slanderous and unsupported allegations against the Respondent herein.

CONCLUSION

It is clear that the Trial Judge did not err in overruling Petitioners motions to amend, alter or vacate, and that this Order violated no constitutional right of the Plaintiffs, thereby raising no federal question for review. The within matter should be dismissed and the Petitioners Appeal be denied.

Respectfully submitted,

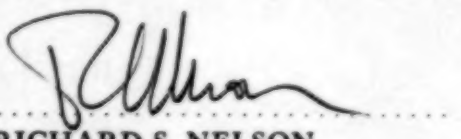
RICHARD S. NELSON

Attorney for Respondent/
Appellee/Plaintiff

11 West Sixth Street
P.O. Box 1209
Covington, Kentucky 41012
(606) 291-1511

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Motion to Dismiss or Affirm and Appendix have been served by the United States Mail upon the following: Patricia Thompson, 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011; and Eddie Thompson, Jr., 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011, on this the 14th day of January, 1983.



RICHARD S. NELSON

Attorney for Respondent/ Appellee Plaintiff

APPENDIX

KENTON CIRCUIT COURT
DIVISION NO. THIRD DIV.

No. 31053

THE PEOPLES LIBERTY BANK AND TRUST COMPANY,

Plaintiff,

VS.

EDDIE THOMPSON, JR., a/k/a
E. J. THOMPSON, JR.,
736 Highland Avenue, Covington, Kentucky,

and

PATRICIA ANN THOMPSON,
736 Highland Avenue, Covington, Kentucky,

Defendants.

COMPLAINT

[Filed August 27, 1976]

Comes now the plaintiff and for its causes of action, states as follows:

COUNT I

1. Plaintiff is a Kentucky banking corporation authorized to bring suit in it's corporate capacity.

2. On September 13, 1974, defendants executed and delivered unto the plaintiff their promissory note in the sum of $21,000.00 plus interest thereon at 9½% per annum payable in monthly installments of $220.00 commencing October 10, 1974 until paid. Said note was executed for good and valuable considerations and a copy of same is attached hereto and incorporated by reference herein.

3. Simultaneous with the execution of said promissory note, defendants executed and delivered unto the plaintiff a mortgage as surety for said promissory note upon the following described real estate situate in the City of Covington, Kenton County, Kentucky and more particularly as follows:

> Being a part of Lot # 10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:
>
> Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

Said mortgage duly recorded in the Kenton County Clerk's records at Covington, Kentucky in Mortgage Book 766 at Page 46-49 and represents a first lien upon said real estate. A copy of said mortgage is attached hereto and incorporated by reference.

4. Plaintiff further states that defendants have failed to make any payments whatsoever upon principal pursuant to said promissory note, have made no payments of interest since May 12, 1975 and their remains presently due and

payable the sum of $19,478.38 plus interest thereon at 9½% per annum from May 10, 1975 until paid plus attorney fees as set forth in said promissory note.

5. Said real estate is a city lot and cannot be divided or partitioned without materially affecting it's value.

COUNT II

6. Plaintiff reiterates and reaffirms all of the allegations contained in the first and last paragraphs of Count I hereof.

7. On February 25, 1972, defendants executed and delivered, for good and valuable considerations, their promissory note unto the plaintiff in the sum of $9,000.00 payable at 7% per annum monthly with the first payment being due and payable in the month of March 1972. A copy of said promissory note is attached hereto and incorporated by reference herein.

8. Simultaneous with the execution of said promissory note, defendants further executed and delivered unto the plaintiff a first mortgage upon the following described real estate situate in the City of Covington, Kenton County, Kentucky as surety for said promissory note:

> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width

the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

9. Said mortgage is commonly known as an "open end" mortgage and pursuant to said open end provision, defendants further borrowed from the plaintiff an additional sum of $1,400.00.

10. As to the obligation of $9,000.00, defendants have failed to make any payments thereon toward principal since January 2, 1974, they have failed to pay any interest since June 30, 1976 and these is presently due and owing the sum of $6,836.38 plus interest at 7% per annum from June 30, 1976 until paid.

11. Pursuant to the open end provisions previously mentioned, the last payment made thereon was on August 9, 1976, the last payment immediately prior thereto was May 17, 1976 and there is presently due and owing thereupon the sum of $1,300.00 plus interest upon said sum at the rate of 8½% per annum from July 1, 1976 until paid, said open end provisions having a different interest rate than that contained in the original note.

WHEREFORE, plaintiff prays the Court as follows:

1. Pursuant to Count I hereof, for judgment against the defendants, jointly and severally, in the sum of $19,478.38, plus interest at 9½% per annum from May 10, 1975 until paid, for attorney fees, and for it's court costs herein expended.

2. Pursuant to Count II hereof, for judgment against the defendants, jointly and severally, in the sum of $6,836.39, plus interest at 7% per annum from June 30, 1976 until paid, for judgment on the sum of $1,300.00, plus interest therein at 8½% per annum from July 1, 1976 until paid and for it's court costs herein expended.

3. That the plaintiff be adjudged to have a first and superior lien upon the real estate of the defendants as herein described and that the real estate here involved be sold by the Master Commissioner of this Court in order to satisfy the judgments rendered herein against the defendants.

4. For all other proper relief.

RICHARD S. NELSON
Attorney for the Plaintiff

11 West Sixth Street
Covington, Kentucky 41011
(606) 291-1511

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK AND TRUST COMPANY,

Plaintiff,

VS.

EDDIE THOMPSON, JR., ETC., ET. AL.,

Defendants.

REPORT OF THE MASTER COMMISSIONER

[Filed April 5, 1977]

This case was referred to the Master Commissioner for hearing which was held on Thursday, March 10th, 1977, at 10:00 A.M. At that time the plaintiff was present represented by its attorney, Jonathan A. Mason, Esq., and the defendants were present representing themselves. From the testimony taken at that hearing, the pleadings and exhibits filed in this case, the Master makes the following report.

1. The defendants, Eddie Thompson, Jr., a/k/a E. J. Thompson, Jr. and Patricia Ann Thompson, husband and wife, hold the record title to the following described property located in Covington, Kenton County, Kentucky:

> Being a part of Lot # 10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

2. On or about September 13, 1974, these defendants executed and delivered to the Peoples Liberty Bank their promissory note in the amount of $21,000.00, bearing interest at the rate of 9-1/2 per-cent per annum, the first payment under said note being due on October 10th, 1974, and thereafter until paid. At the same time, they executed and delivered to said bank a mortgage on the above described property. These instruments, among other things, provided for regular monthly payments to retire the indebtedness and in the event that payments should fall in default, the bank would have the right to declare the entire balance due and file suit for collection therefor. The Master finds that no payments have been made on this indebtedness since May 12th, 1975, and the balance that is now due and owing as of September 16th, 1975 is $19,478.38, together with interest thereon at the rate of 9-1/2 per-cent per annum from that date until date of judgment and thereafter at the rate of 8 per-cent per annum. By virtue of the note and mortgage aforesaid, the plaintiff in this case has a first lien on the above described property, ad valorem taxes and Court costs excepted.

3. The above described real estate is a city lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

4. The defendants also hold the record title to the following described real estate located on Highland Avenue, Kenton County, Kentucky:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line or the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. On or about February 25th, 1972, these defendants executed and delivered to the plaintiff their promissory note in the amount of $9,000.00 with interest at 7 per-cent per annum due and payable from March, 1972 until paid. In addition to the note, these defendants also executed and delivered to the plaintiff a mortgage on the above described real estate. These instruments provided for regular monthly payments to retire the indebtedness and in the event they should fall in default, the plaintiff would have the right to declare the entire balance due and payable. The Master finds that the last payment made on the principle amount of this indebtedness was January 2nd, 1974, and the last payment on the interest on this indebtedness was June 30th, 1976. The balance that is due now is $6,836.39 with interest thereon at the rate of 7 per-cent

per annum from June 30th, 1976 until paid. By virtue of these instruments the plaintiff has a first lien on the above described property, Court costs and ad valorem taxes excepted.

6. The property described above consists of a lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

7. The evidence adduced at the hearing indicates that the additional sums claimed due in paragraphs nine and eleven of plaintiff's complaint have previously been satisfied in full and are no longer owed by the defendants.

8. At the trial of this case, the defendant, Eddie Thompson, Jr., was permitted to testify in narrative form and was granted free lattitude to tell his entire story about these transactions. From that testimony it appears to the Master that he and the plaintiff had certain misunderstandings in their dealings and while some confusion may have been added to the negotiations in this case, none of the defendant's testimony constitutes a legal defense to the plaintiff's claim, and the Master must conclude that the defendants have failed to establish the allegations contained in their pleadings by a preponderance of the evidence.

9. This case now stands ready to be submitted for a judgment and Order of Sale.

RECOMMENDATION

The Master recommends that a judgment be entered in this case in conformity with his report as set out above, that among other things, the two parcels of property de-

scribed herein be sold as a whole and the proceeds will be distributed as set out in this report.

Respectfully submitted,

/s/ WILLIAM J. DEUPREE, JR.
Master Commissioner

Copies to:

Jonathan A. Mason, Esq.
E. J. Thompson, Jr. and Patricia Ann Thompson

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,
Plaintiff,

vs.

EDDIE THOMPSON, JR., a/k/a
E. J. THOMPSON, JR. and
PATRICIA ANN THOMPSON,
Defendants.

JUDGMENT AND ORDER OF SALE

(Filed April 21, 1977)

This cause having been referred to the Master Commissioner of this Court for hearing, testimony having been taken at the hearing held on March 10, 1977, the parties being present, thereafter the Master Commissioner filed his Report with this Court; the Master Commissioner having filed Motion requesting confirmation of this Report, the defendants having filed objections to the Report of the Master Commissioner, and the Court having reviewed the Report of the Master Commissioner and the objections thereto of the defendants, and thereafter adopting the Report of the Master Commissioner;

NOW, THEREFORE, the Court finds as follows:

1. The defendants, Eddie Thompson, Jr., a/k/a E. J.

Thompson, Jr. and Patricia Ann Thompson, husband and wife, hold the record title to the following described property located in Covington, Kenton County, Kentucky:

> Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:
>
> Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the West side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

2. On or about September 13, 1974, these defendants executed and delivered to The Peoples Liberty Bank their promissory note in the amount of $21,000.00, bearing interest at the rate of 9½ per-cent per annum, the first payment under said note being due on October 10th, 1974, and thereafter until paid. At the same time, they executed and delivered to said bank a mortgage on the above described property. These instruments, among other things, provided for regular monthly payments to retire the indebtedness and in the event that payments should fall in default, the bank would have the right to declare the entire balance due and file suit for collection therefor. The Master finds that no payments have been made on this indebtedness since May 12th, 1975, and the balance that is now due and owing as of September 16th, 1975 is $19,478.38, together with interest thereon at the rate of 9½ per-cent per annum from that date until date of judgment and thereafter at the rate of 8 per-cent per annum. By virtue of the note and mortgage aforesaid, the plaintiff in this case has a first lien on the above described property, ad valorem taxes and Court costs excepted.

3. The above described real estate is a city lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

4. The defendants also hold the record title to the following described real estate located on Highland Avenue, Kenton County, Kentucky:

> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.
>
> Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. On or about February 25th, 1972, these defendants executed and delivered to the plaintiff their promissory note in the amount of $9,000.00 with interest at 7 percent per annum due and payable from March, 1972 until paid. In addition to the note, these defendants also executed and delivered to the plaintiff a mortgage on the above described real estate. These instruments provided

for regular monthly payments to retire the indebtedness and in the event they should fall in default, the plaintiff would have the right to declare the entire balance due and payable. The Master finds that the last payment made on the principle amount of this indebtedness was January 2nd, 1974, and the last payment on the interest on this indebtedness was June 30, 1976. The balance that is due now is $6,836.39 with interest thereon at the rate of 7 per-cent per annum from June 30th, 1976 until paid. By virtue of these instruments the plaintiff has a first lien on the above described property, Court costs and ad valorem taxes excepted.

6. The property described above consists of a lot with a building constructed thereon and is indivisible and incapable of being divided with out materially impairing its value and if sold, it must be sold as a whole.

Based upon the foregoing Findings,

IT IS NOW, THEREFORE, ORDERED AND ADJUDGED that the plaintiff, The Peoples Liberty Bank and Trust Company of Covington, Kentucky, recover of the defendants, Eddie Thompson, Jr., a/k/a E. J. Thompson, Jr. and Patricia Ann Thompson, jointly and severally, pursuant to the promissory note dated September 13, 1974, the sum of $19,478.38, together with interest thereon at the rate of 9½ per-cent per annum from September 16, 1975 until April 18, 1977 and thereafter at the rate of 8 per-cent per annum until paid, and its Court costs herein expended.

IT IS FURTHER ORDERED AND ADJUDGED that said plaintiff recover of said defendants, jointly and severally, pursuant to the promissory note dated February 25, 1972, the sum of $6,836.39, plus interest thereon at

7 per-cent per annum from June 30, 1976 until paid and its Court costs herein expended.

IT IS FURTHER ORDERED AND ADJUDGED that the real estate described herein is indivisible and cannot be divided without materially impairing its value and should be sold as a whole.

IT IS FURTHER ORDERED AND ADJUDGED that the real estate be sold subject to any unpaid ad valorem taxes for the year 1977 and any delinquent taxes.

IT IS FURTHER ORDERED AND ADJUDGED that the Judgment of the plaintiff be considered a first and superior lien upon the real estate herein described and inferior only to the costs of this action.

IT IS FURTHER ORDERED AND ADJUDGED that the Master Commissioner of this Court sell at public sale on a day to be fixed by him, the real estate described herein at the door of the Courthouse in the City of Covington, Kentucky, after advertising the time, place and terms of said sale, by written notices posted, one at the door of the Courthouse, one in the vicinity of the real estate and two in public places in the City of Covington, Kentucky, for fifteen days next preceding the day of sale, after advertising, also by publication in a newspaper of general circulation for three (3) times. Said publication to be once a week for three (3) successive weeks, so made that the final publication will appear not later than two days before the day upon which the sale will occur, in compliance with K.R.S. 424. Said notice and publication will set out the description of said real estate. The sale shall be made to the highest and best bidder or bidders and shall be on a credit of four, eight and twelve months from day of sale.

For the purchase price, the Master Commissioner will take from the purchaser or purchasers, bonds in three (3) equal installments with good and sufficient surety or sureties, bearing interest from date of sale and payable to himself as Master Commissioner and at the time of the sale, the Master will require each purchaser to deposit $25.00 with said Master to be applied to any expense occasioned by any default of said purchaser.

The Master will report.

D. J. GOODENOUGH
JUDGE, KENTON CIRCUIT COURT

[CERTIFICATION OMITTED]

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLES LIBERTY BANK & TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ETC., ET AL.,

Defendant.

MASTER COMMISSIONER'S REPORT OF SALE

Pursuant to the judgment and order of sale entered herein May 27th, 1977 the Master Commissioner advertised the time, terms and place of sale of the real estate hereinafter described by written notices posted, one at the Court House door, one in the immediate vicinity of the property ordered to be sold, and two at other public places in the City of Covington for fifteen days next preceeding the day of sale and further by publication in the Kentucky Post, the official newspaper of Covington, Kentucky, for three weeks next preceding the day of sale; and, after having had the said property appraised under oath by W. Joseph Kennedy and William C. Beuttel, two disinterested, intelligent housekeepers of said county, not related to any party to this action, whose appraisement is in writing and filed herewith, the Master did on the 21st day of June, 1977, expose at public vendue, at the Court House door in said city, on the terms decreed, said prop-

erty described in said judgment notices and publications, to wit:

> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the dividing line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.
>
> Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

The Master Commissioner offered the above described real estate for sale and the Peoples Liberty Bank and Trust Company of Covington, Kentucky, bid therefor the sum of $14,500.00, and no one making a higher or better bid, the Master Commissioner sold said real estate to the Peoples Liberty Bank and Trust Company of Covington, Kentucky for the sum of $14,500.00. The property was appraised for $16,000.00. The purchasers paid cash.

> Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:
>
> Situate at the northwest corner of Greenup and Rob-

bins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

The Master Commissioner offered the above described real estate for sale and the Peoples Liberty Bank and Trust Company of Covington, Kentucky, bid therefor the sum of $5,500.00 and no one making a higher or better bid, the Master Commissioner sold said real estate to the Peoples Liberty Bank and Trust Company of Covington, Kentucky for the sum of $5,500.00. The plaintiff's purchaser has heretofor recovered a judgment in this case in excess of its bid and will apply to the Court for the proper orders granting it a credit. With this in mind, they paid to the Master Commissioner only the Court costs incurred herein. The property was appraised for $7,000.00.

Respectfully submitted,

WILLIAM J. DEUPREE, JR.
Master Commissioner

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

MOTION AND NOTICE

Comes now the plaintiff, through counsel, and pursuant to KRS 426.260 moves for an Order or Writ of Possession of the two (2) parcels of real estate involved in these proceedings and gives notice as follows to the defendants: TO EDDIE THOMPSON, JR. AND PATRICIA THOMPSON, NOTICE:

You and each of you are hereby notified that the undersigned will, as attorney for the plaintiff herein, on the 17 day of October, 1977, ask that the within Court give a Judgment and Writ for the plaintiff to be placed in possession of the two (2) parcels of real estate involved in this action, being commonly known as 736 Highland Avenue, Covington, Kentucky and the northwest corner of Greenup and Robbins Streets, Covington, Kentucky.

RICHARD S. NELSON
Attorney for Plaintiff

P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

NOTICE

Notice is hereby given that the above styled motion will be brought on for hearing before the Kenton Circuit Court, Third Division, on ....., the 17 day of October, 1977 at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard.

RICHARD S. NELSON

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

WRIT AND ORDER OF POSSESSION

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within ten (10) days verifying compliance with this Order:

> Commonly known as 736 Highland Avenue, Covington, Kentucky and being more particularly described as follows:
>
> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and

Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

Commonly known as the northwest corner of Greenup and Robbins Streets, Covington, Kenton County, Kentucky and being more particularly described as follows:

Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

DATED at Covington, Kenton County, Kentucky, this 19 day of October, 1977.

D. J. GOODENOUGH
JUDGE

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. CA-2149-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

v.

THE PEOPLES LIBERTY BANK AND
TRUST COMPANY,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT
Nos. 31053 and 33430

ORDER GRANTING MOTION TO DISMISS APPEAL

BEFORE: MARTIN, CHIEF JUDGE, WILHOIT, and REYNOLDS, JUDGES.

The Court, having considered the motion to dismiss the appeal, and having further considered the response thereto, and being of the opinion that as the notice of appeal was not filed within twenty days of the date of the order confirming the final report of the Master Commissioner, this appeal should be, and hereby is, DISMISSED.

ENTERED: February 7, 1978.

JUDGE, COURT OF APPEALS

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. CA-2149-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

v.

PEOPLE'S LIBERTY BANK,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT

ORDER DENYING MOTION TO RECONSIDER

BEFORE: MARTIN, CHIEF JUDGE, WILHOIT, and REYNOLDS, JUDGES.

The Court, having considered the motion for rehearing which is treated as a motion to reconsider, and being otherwise sufficiently advised, ORDERS that the motion be and is hereby DENIED. The Clerk of this Court is hereby ORDERED to return the file to the Kenton Circuit Court forthwith.

ENTERED: March 30, 1978.

JUDGE, COURT OF APPEALS

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLE'S LIBERTY BANK AND TRUST CO.
Plaintiff,

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Defendants.

MOTION
(1) FOR RELIEF FROM ORDER CONFIRMING THE FINAL REPORT OF THE MASTER COMMISSIONER, AND
(2) FROM ORDER GRANTING WRIT OF POSSESSION
(3) FOR LEAVE TO FILE COPY OF APPRAISAL REPORT

Pursuant to Cr. 60.02, defendants herein move the court to vacate and set aside the order confirming the final report of the Master Commissioner entered against defendants in this cause on July 18, 1977, and the order granting plaintiff a Writ of Possession on October 19, 1977, on grounds that the foreclosures were procured by fraud and discrimination; and the Writ of Possession was defective and wrongfully issued as more fully appears from the appraisal of 736 Highland Avenue and the record.

There can be no valid sale without a valid appraisement. *K.R.S. 426.200 (3) Adams* v. *Napier 334 S.W. 2d 915.*

Defendants further move the court for an order granting leave to file copy of appraisal of 736 Highland. (Exhibit A) Mr. Grayson, Sr. had this appraisal made for People's Liberty Bank sometime in the summer of 1975. Mr. Grayson, Sr. refused to give defendant's a copy of the appraisal made of 1013-15 Greenup Street.

The purported Writ of Possession issued on October 19, 1977 is void as the court entered its final order on July 18, 1977. "A trial court loses jurisdiction over its judgment 10 days after the signing and entry thereof, unless a motion is filed under CR 59.02. A judgment entered after expiration of such 10-day limit is void, an appeal therefrom must be dismissed, leaving the first judgment in effect." *Yocum* v. *Oney 532 S.W. 2d 15.*

Where an illegal or wrongful sale of property is made under a power of sale contained in a mortgage or deed of trust, mortgagee or trust deed mortgagee will be held liable to mortgagor for damages sustained. *Owens* v. *Grimes 539 S.W. 2d 387.*

PATRICIA THOMPSON, Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

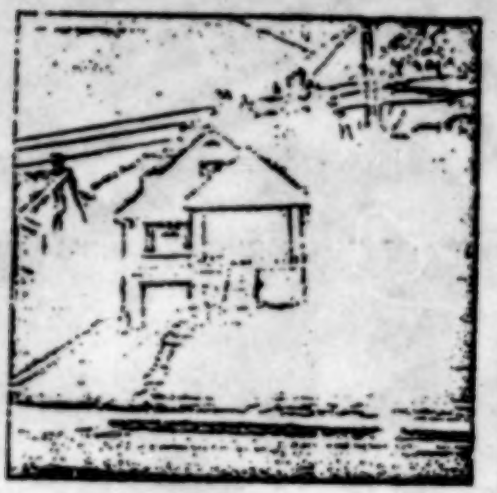
CERTIFICATION

I certify that a copy of the foregoing Motion has been served by the United States mail upon:

Mr. Richard Nelson, attorney for plaintiff, and The Court of Appeals this 8 day of March, 1978.

PATRICIA THOMPSON, Pro Se

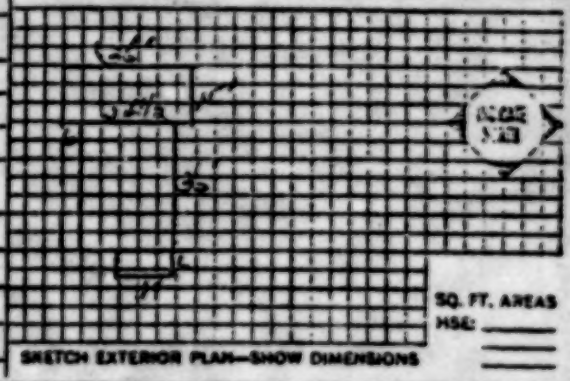
...FESSIONAL RESIDENTIAL ...SAL



Ins. Value 100%: Loan Number:
Ins. Value "As Dev.": Loan Reported:
No. of dwelling units: $ 26,600
Masonry ... or Frame: Final Estimate of Market Value

ADDRESS: 736 Highland Avenue
CITY/COUNTY: Covington BLK. LOT
SUBDIVISION:

trust



SQ. FT. AREAS
HSE:

SKETCH EXTERIOR PLAN—SHOW DIMENSIONS

N E I G H B O R H O O D D A T A

PROXIMITY OF PROPERTY TO:	Less ½ mi.	½ to 1 mi.	1 mi. +	Trans. to	TRENDS:	INC.	DEC.	STAB.
Downtown Area			X	X	Income Level	X		
Local Shopping		X		X	Population			X
Grammar School		X		X	Housing Units			X
High School			X	X	Density Pop./Unit	X		
Expressway Access			X		Ave. Prop. Values	X		
Other:					Ethnic Composn.	changing		
					Remaining Economic Life			yrs.

TYPE OF DEVELOPMENT: One Few Many Builders. UNITS PER YR.

GENERAL ECONOMICS:
TYPICAL RESIDENT'S GROSS INC. $10,000 $/yr.
TYPICAL OCCUPATION White & Blue Collar

TYPICAL PROPERTY VALUES:	DOLLARS/000 LOW	HIGH	MODE	% DEM.
Single Family Residence	15,000	28000		90
2-12 Family & Condominium	20000	30000		10
Condominium & Multi-Family				
Non-Residential Uses				

TYPICAL FINANCING: CONV. X INS. Int./Yld. %

S I T E D A T A

LOT SIZE	41 x 146 x	x	x		Corner	Inside X	
ZONING	Res	HIGHEST AND BEST USE OF SITE: Present X or					
IMPROVMTS.	Asphalt St.	Conc. St. X	Curbs X	Sidewalks X	Alley	Driveway X	
UTILITIES	Gas X	Elect. X	Water X	San. Sewer X	Storm Sewer X	Well	Septic
EASEMENTS (DETRIMENTAL TO VALUE):		Party Wall	Driveway	Sidewalk	Other		

Describe Easements:

B U I L D I N G D A T A

1 Family — ACT 8 / EFF 8

EXTERIOR					Good	Avg.	Poor
FOUNDATION	Conc. X	Block	Brick			X	
	Bsmt. X	Crawl	Slab	full		X	
WALL/CONST.	Frame	Veneer X	Block	brick		X	
WINDOWS	Metal	Wood X	Type	S & S		X	
ROOFING	Asphalt X	Bit. Up	Wood			X	
SIDING	Wood	Alum.	Stucco	brick			
GAR.-CAR PT.	Frame	Veneer	Block				
# Cars	Det'd.	Att'd.	Bt.-in X	O/H Door		X	
OTHER	Gutters	Porch	Patio				

REMARKS: Family room in basement-paneled tile floor, electric door lift.

INTERIOR						Good	Avg.	Poor
WALLS & CEIL.	Drywall X	Plaster	Wood				X	
FLOOR	Conc.	Tile	Wood X	Carpet		X		
CENT. HTG.	Air	Water	Steam	SPACE			X	
FUEL	Gas	Oil	Elect. X	Coal			X	
FUR./BOIL.	Age	HWH	Gals.	A/C			X	
ELECT.	200 Amps	Fuse	Cir. Br.	G/S			X	
BATH(S)	Age -	FLR/walls	Ceramic X	Other -		X		
BATH FIX(S)	Lavs. 1	W.C.'s 1	Tub(s) 1	Shwr(s) 1			X	
KITCHEN	Age	Cb. & SI.	Adq.	Inadq.			X	
	O/R X	Dishw.	Disp.	Ex. Fan			X	
OTHER	Fwspl. X			Flr. Plan D			X	

FLOOR	ROOMS	LIVING	DINING	KITCHEN	BEDRM	CLOSETS	BATHS FULL	BATHS HALF	APTS.
BASEMENT									
1st FLOOR	4	1	X	X	2	X	1		
2nd FLOOR					2		1	3	
3rd FLOOR									
ATTIC									
TOTAL									No. Units

DEPRECIATION	IF NOT TYPICAL, DESCRIBE
PHYSICAL DETERIORATION	
FUNCTIONAL OBSOLESCENCE	
ECONOMIC OBSOLESCENCE	

29a

DEFINITION OF MARKET VALUE:* "Market value contemplates the consummation of a sale and the passing of title from seller to buyer by deed, under conditions whereby:

1. Buyer and seller are free of undue stimulus and are motivated by no more than the reactions of typical owners.
2. Both parties are well informed or well advised and act prudently, each for what he considers his own best interest.
3. A reasonable time is allowed to test the market, and
4. payment is made in cash or in accordance with financing terms available in the community for the property type at its locale."

*Society of Real Estate Appraisers

COST APPROACH TO VALUE:

LAND VALUATION—(ZONED: Res.): 41 F.F. or S.F. x 50 $/F.F. or $/S.F. = $ 2050

+ SITE IMPROVEMENTS: "AS IS" driveway, landscaping, etc. + 500

other: TOTAL $ 2,550

BUILDING VALUATION—REPLACEMENT COST

BLDG.	AREA	UNIT COST	COST NEW	AGE ACT.	AGE EFF.	DEPRECIATION PHY.	DEPRECIATION FUNC.	DEPRECIATION ECON.	DEPRECIATION TOTAL	DEP. VALUE
MAIN	882	30.00	26460	8	8	10%				23814
Patio & Porch	84									700
Garage	259									500
Basement	623									1000

(Paneled & Finished walls & tile floors) + 26,014

INDICATED VALUE from COST APPROACH $ 28,564

MARKET DATA APPROACH TO VALUE:

	A		B		C	
ADDRESS OF COMPARABLE SALES	2240 Joins Lane		7146 Dennis Road		516 Richland	
SALE PRICE OF COMPARABLE	Jan 1973 $ 30,900		Apr 1973 $ 25,000		July 1973 $ 18,150	
ADJUSTMENT FOR DATE OF SALE	$ (−)	(+)	$ (−)	(+)	$ (−)	(+) 1150
AGE & OVERALL CONDITION	2000			2500		2000
SIZE & UTILITY			500			2000
MODERN KITCHEN, BATH, HEATING			500			
GARAGE & PORCHES						500
SITE & LOCATION	1500		1000			
OTHER	800					
SUB-TOTALS	$ 4300 (−)	$ (+)	$ 2000 (−)	$ 2500 (−)	$ (−)	$ (+)
TOTALS	$ 26600		$ 25500		$ 24,800	

INDICATED VALUE from MARKET APPROACH $ 26,600

INCOME APPROACH TO VALUE: (If applicable)

No Rental Figures Available in Area

ESTIMATED MONTHLY RENTAL: $ _____ x GROSS MONTHLY MULTIPLIER (_____) =

INDICATED VALUE from INCOME APPROACH $ _____

MARKETABILITY "AS IS": Good X Average _____ Fair _____ Poor _____

REMARKS:

CORRELATED FINAL ESTIMATE OF MARKET VALUE AS OF _____, 19__ $ 26,600

I (We) certify that to the best of my (our) knowledge and belief the facts and data used herein are true and correct, and that I (we) personally inspected the property from the inside and the outside, and that I (we) have no undisclosed interest, present or prospective therein.

_____ Appraiser(s)

MARKETABILITY "AS REPAIRED": Good _____ Average X Fair _____ Poor _____

NEEDED REPAIRS: CURABLE ITEMS	EST. COST

COR. ESTIMATE OF MARKET VALUE $ _____

EST. CONTRIBUTION TO MARKET VALUE FROM REPAIRS + _____

CORRELATED ESTIMATE OF MARKET VALUE, AS REPAIRED:

Sale A (market data approach) indicates a value of $26,600. This sale was most similar in age, utility and size, and located in a close proximity. No rentals for single family dwellings were available - income approach not applicable.

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

MOTION AND NOTICE

[Filed June 14, 1978]

Comes now the plaintiff, through counsel, and moves that the Court issue an Order and Writ of Possession for the following described real estate presently occupied by the defendants:

Commonly known as 736 Highland Avenue, Covington, Kentucky and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision;

thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots, 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

TO EDDIE THOMPSON, JR. AND PATRICIA THOMPSON, NOTICE:

You and each of you are hereby notified that the undersigned, as attorney for the plaintiff herein, will, on the 26th day of June, 1978, ask the Third Division of the Kenton Circuit Court to grant an Order and Writ of Possession directing that the Sheriff of Kenton County place the plaintiff in possession of the above described real estate.

RICHARD S. NELSON
Attorney for Plaintiff
P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

NOTICE

Notice is hereby given that the above styled motion will be brought on for hearing before the Kenton Circuit Court, Third Division, on Monday, the 26th day of June, 1978 at 3:00 p.m., or as soon thereafter as counsel may be heard.

RICHARD S. NELSON

[CERTIFICATE OMITTED]

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ET AL.,

Defendants.

WRIT AND ORDER OF POSSESSION

[Filed July 7, 1978]

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within (10) days verifying compliance with this Order:

> Commonly known as 736 Highland Avenue, Covington, Kentucky, and being more particularly described as follows:
>
> Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows; Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of

which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

DATED at Covington, Kenton County, Kentucky, this 12 day of April, 1978.

/s/ D. J. GOODENOUGH
JUDGE

A TRUE COPY: ATTEST

ED F. SCHROEDER-CLERK

BY /s/ E. NIENABER D.C.

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al,

Defendants.

AFFIDAVIT

[Filed July 12, 1978]

Comes now Richard S. Nelson, atorney for the plaintiff herein, and being first duly cautioned and sworn, states as follows:

1. The Writ and Order of Possession issued in this matter pursuant to Order of the Court dated July 6, 1978 was not immediately signed by the Judge of the Kenton Circuit Court at the specific request of counsel for the plaintiff. The reason for this was to allow the Kenton County Sheriff to make necessary arrangements to execute the Writ and Order of Possession and since the Sheriff is under a ten (10) day deadline by statutes, counsel desired not to obtain the signature of the Judge and file the Writ and Order of Possession until July 12, 1978.

2. The date of the Writ and Order of Possession as

shown thereon at the bottom of April 12, 1978 is in fact July 12, 1978 and the month of "April" was inadvertently inserted by counsel for the plaintiff.

The filing date in the Office of the Kenton Circuit Court also was July 12, 1978 and the Writ and Order of Possession was delivered to the Kenton County Sheriff on or about that date for execution.

The foregoing and within Affidavit is made by counsel in order to establish the true and accurate sequence of events and to correct the obvious chronological dates inaccurately and inadvertently contained in the Writ and Order of Possession at the end thereof and on it's time stamp.

RICHARD S. NELSON
Attorney for Plaintiff

/s/ LINDA S. TYE
NOTARY PUBLIC
State of Kentucky at Large

Subscribed and sworn to before me, a Notary Public, by Richard S. Nelson, this 19th day of July, 1978.

[CERTIFICATE OMITTED]

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK,

Plaintiff,

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Defendants.

ORDER

[Filed June 17, 1981]

The instant action is before the court on defendants' Motion to Set Aside (a) Mortgage Foreclosure Sale, (b) Order Confirming Sale (c) Cancel Deeds Made Pursuant thereto; (d) Writs of Possession Entered Thereafter (signed in October 1977 and April 1978, respectively).

Defendants Patricia and Eddie Thompson, Jr. present pro se; Mr. Richard Nelson, attorney for Peoples Liberty Bank, present.

The Court having reviewed the authorities cited by defendants and otherwise being sufficiently advised:

IT IS ORDERED AND ADJUDGED that the Motion/s of Defendants is hereby denied because these matters have

been previously ruled on by the Court and denied, and the Court does not have jurisdiction of the matter.

This is the 17 day of June 1981.

JUDGE KENTON CIRCUIT COURT

/s/ D. J. GOODENOUGH
THIRD DIVISION

[CERTIFICATE OMITTED]